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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Broadband PCS C and F Block)	
Installment Payment Issues)	PN Nos: 97-679
)	97-1152
and)	
)	
Seven Percent Interest Rate)	
Imposed on C Block)	
Installment Payment Plan)	

To: Chief, Wireless Telecommunications Bureau

COMMENTS OF MORRIS COMMUNICATIONS, INC.

Morris Communications, Inc. ("Morris"), by its attorneys, submits its Comments in response to the Commission's above-captioned Public Notices, both dated June 2, 1997.

I. Statement of Interest.

Morris is an FCC licensee which, as a participant in the Commission's 900 MHz Specialized Mobile Radio (SMRS) auction, won a number of Major Trading Area ("MTA") licenses. Accordingly, Morris is "similarly situated" to broadband PCS licensees, and therefore is a party with standing to submit comments pertaining to the above-captioned Public Notices. If the Commission affords any form of installment payment relief to broadband PCS licensees, that relief should also be granted to Morris and other 900 MHz SMRS MTA licensees ("900 MHz licensees").

II. Summary of Commission Inquiry.

The Commission, in response to numerous requests from several broadband Personal Communications Services ("PCS") licensees to restructure the broadband PCS C and F block debt, suspended the deadline for PCS C and F block installment payments. After receiving several proposals for alternative financing arrangements for those payments, the Commission commenced the solicitation of comments concerning: (a) proposals for the restructuring of broadband PCS C and F block debt; (b) refunding payments of those licensees who submitted payments prior to suspension of the installment payments; (c) whether a waiver of Section 24.711(b)(3) of the Commission's Rules, 47 C.F.R. § 24.711(b)(3), should be granted, and (d) whether, if a waiver of § 24.711(b)(3) is granted, "such relief should be granted to all similarly situated parties, whether or not they have filed a request for waiver."

Section 24.711(b)(3) states that, for small business PCS licensees, the interest on their installment payments shall be imposed "on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted." Id. The PCS licensees requesting waiver are those licensees whose licenses were conditionally granted on September 17, 1996, and who, due to the factors establishing Treasury note obligations, are paying 7% interest on their installment payments. Conversely, those PCS licensees who were granted licenses after September 17, 1996, pursuant to the formula in § 24.711(b)(3), are subject to only 6.5% interest on their installment payments. The licensees seeking waiver request a reduction on their installment payment plan notes from 7% to 6.5%.

III. Similarities Between SMRS & PCS.

Broadband PCS and 900 MHz SMRS are similar services. Both, for example, are

commercial mobile radio services ("CMRS") used to provide two-way voice and data communications. Indeed, the Commission found the two services so similar that it modeled its 900 MHz SMRS channel assignment and service area rules on those of broadband PCS. Said the Commission: "Based on our view of the actual and potential competition in the CMRS market, we conclude that our channel assignment and service area rules for 900 MHz SMRS service . . . should be comparable to those of . . . PCS to the extent practical. Although only 5 MHz of spectrum is available in the 900 MHz band, we believe this service presents significant opportunities for the development of certain types of wide-area mobile voice and data services that could compete with [PCS services]." Implementation of Sections 3(n) and 332 of the Communications Act, Third Report and Order, 9 FCC Rcd. 7988, ¶ 113, GN Docket No. 93-252 (1994) ("CMRS Third Report and Order"). Accordingly, the Commission adopted wide-area licensing for 900 MHz SMRS, based on the broadband PCS model.

Because it found that 900 MHz SMRS systems could be competitive with those of broadband PCS, the Commission implemented construction rules for 900 MHz SMRS based upon those of broadband PCS. For example, the Commission requires 900 MHz licensees to provide coverage to one-third of the population within three years of license grant and to two-thirds of the population within five years. Alternatively, after being licensed for five years, those licensees may submit a showing to the Commission demonstrating that they are providing "substantial service." 47 C.F.R. § 90.665 (b), (c).

The Commission stated that the 900 MHz SMRS construction requirement "fits squarely between our 10 MHz broadband PCS rules, which require coverage to one-fourth of

the population within five years . . . and our narrowband PCS rules, which require coverage to one-fourth of the population within five years, and three-fourths of the population within 10 years." Amendment of Parts 2 and 90 of the Commission's Rules, Second Report and Order and Second Further Notice of Proposed Rulemaking, 10 FCC Rcd. 6884, ¶ 40, GN Docket 93-252 (1995) ("CMRS Second Report and Order"). Additionally, the Commission made its penalty for the failure of 900 MHz licensees to comply with construction requirements "consistent with the penalties provided in [the FCC's] PCS rules." Id. at ¶ 43.

The Commission also permitted 900 MHz licensees, following the broadband PCS model, to resell spectrum within their service area, in order to encourage the "provision of service to small markets and rural areas, which will help licensees fulfill coverage requirements and will promote the most efficient use of spectrum." Id. at ¶ 40.

Additionally, the Commission based the small business definition for 900 MHz licensees on a "variation of the definition of used for broadband PCS." CMRS Third Report and Order at ¶139. Although the Commission expected that the implementation of 900 MHz SMRS service would require less capital than for broadband PCS, the Commission noted that 900 MHz SMRS service would most likely be a "capital intensive undertaking." In the Matter of Amendment of Parts 2 and 90 of the Commission's Rules, Second Order on Reconsideration and Seventh Report and Order, GN Docket 93-252, ¶ 156 (1995) ("Second Order"). Accordingly, the Commission modeled its installment payment options for 900 MHz licensees that qualified as "small businesses," on the broadband PCS installment payment rules.

As stated above, § 24.711(b)(3) of the Commission's Rules states that the interest on

broadband PCS installment payments for entities classified as "small businesses" is based on the "rate for ten-year U.S. Treasury obligations applicable on the date the license is granted." Id. Similarly, for entities classified as "small businesses," the interest on installment payments for 900 MHz licenses is "the Treasury note rate." 47 C.F.R. § 90.910(a)(1).

IV. Morris Should be Afforded the Same Relief Granted to Broadband PCS Licensees.

Legal precedent forbids the disparate treatment of similarly situated entities by administrative bodies. Garrett v. FCC, 513 F.2d 1056, 1060 (D.C. Cir. 1975), citing Herbert Harvey, Inc. v. NLRB, 424 F.2d 770, 780 (D.C. Cir. 1969). See also Melody Music, Inc. v. FCC, 345 F.2d 730, 732-733 (D.C. Cir. 1965) ("similar applicants" must be treated "similarly" by the FCC). Because the Commission has found broadband PCS and 900 MHz SMRS services to be quite similar, and has chosen to regulate them in a nearly identical fashion, binding legal precedent requires that 900 MHz licensees, including Morris, should be permitted to enjoy any relief granted to broadband PCS licensees pursuant to this proceeding.

As the Commission has noted, 900 MHz licensees are competing in the same CMRS marketplace as are broadband PCS providers. CMRS Third Report and Order, ¶ 113. Moreover, due to smaller amount of spectrum allotted to 900 MHz licensees (5 MHz) when compared to broadband PCS licensees (30 MHz), "it is more difficult for a 900 MHz MTA licensee to provide the ubiquitous coverage that a . . . broadband PCS [licensee] may contemplate." CMRS Second Report and Order, ¶ 41. Consequently, network infrastructure costs may actually prove to be higher for 900 MHz licensees when they compete against

broadband PCS providers. Accordingly, fundamental fairness dictates that 900 MHz licensees be afforded the same regulatory and financial assistance as broadband PCS licensees.

If broadband PCS licensees are permitted to make installment payments at a lower interest rate, and/or authorized to "restructure" their payments, those licensees will be able to utilize the increased financial resources to meet their construction requirements and develop improved services for their subscribers. Conversely, if 900 MHz licensees are not granted the same regulatory relief as PCS providers, the 900 MHz licensees will have to put more of their money into loan payments which would place them at a distinct competitive disadvantage.

Moreover, both broadband PCS providers and 900 MHz licensees must compete for investors, in order to build out their networks, and provide quality and innovative services for their subscribers. Because investors are more likely to invest in a company with a favorable debt structure, if 900 MHz licensees are not granted the same license payment terms as broadband PCS licensees, it is highly probable that the 900 MHz licensees will be without the capital resources needed to fully develop their networks, and to compete with broadband PCS providers.

Additionally, comparable treatment of broadband PCS providers and 900 MHz licensees is probably mandated by recent legislation. Section 257 of the Telecommunications Act of 1996 ("Telecom Act") requires the Commission to identify and eliminate market barriers for small businesses. 47 U.S.C. § 257(a). Granting equitable license payment terms would improve the 900 MHz licensees' access to capital markets, thus helping to eliminate a

significant market barrier for those licensees. It would, on the other hand, be highly discriminatory for the Commission to remove a market barrier for broadband PCS providers, while leaving that barrier in place for similarly situated entities such as 900 MHz licensees.

Additionally, it should be emphasized that, once their systems are operational, broadband PCS and 900 MHz licensees will be competing for the same customers and vendor resources. Consequently, even if the 900 MHz licensees were able to attract enough capital to build out their networks, it is unlikely that, under their current license payment terms, they would have the necessary resources to develop the innovative voice and data services required to remain competitive with broadband PCS providers, should those providers be granted more favorable payment terms. The likely result would be that many 900 MHz licensees would go out of business, thereby decreasing competition in the CMRS marketplace.

Conversely, if the Commission reforms the installment payment plan and grants relief for both broadband PCS providers and 900 MHz licensees in an equitable fashion, the public would benefit significantly. The 900 MHz licensees would, for example, be able to concentrate their financial resources toward building out their infrastructure. This would not only allow 900 MHz licensees to rapidly provide service to subscribers, it would also promote the Commission's goal of giving those licensees the opportunity to develop different types of wide-area mobile voice and data services that would make them significant competitors in the CMRS marketplace. CMRS Third Report and Order, ¶ 113.

If the 900 MHz licensees are given a level playing field on which to compete with the broadband PCS providers, they would be able to quickly begin generating revenue from their

systems. In addition to the innovative services that would result from that infrastructure deployment, many jobs would be created, thus promoting greater productivity for the 900 MHz licensees, which would help them meet customer demand for their wide-area services.

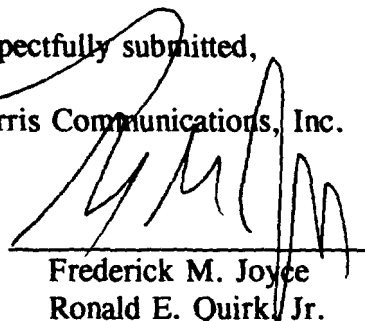
V. Conclusion.

For the foregoing reasons, Morris respectfully submits that 900 MHz SMRS MTA licensees, including Morris, as similarly situated entities, should be afforded the same installment payment relief that the Commission may choose to grant to broadband PCS licensees, in this proceeding.

Respectfully submitted,

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June 23, 1997
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CERTIFICATE OF SERVICE

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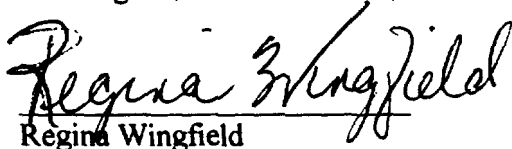
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